

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JEROME C. SILLS

*

Plaintiff,

*

Civil Action No. 15-30020-MGM

v.

*

PHONON CORP. and DOES 1-5,

*

*

Defendants,

*

*

MEMORANDUM AND ORDER RE: REPORT AND RECOMMENDATION
REGARDING PLAINTIFF'S MOTION TO PROCEED *IN FORMA PAUPERIS* AND
MOTION TO APPOINT COUNSEL AND
PLAINTIFF'S MOTION FOR LEAVE TO PRESENT ADDITIONAL ARGUMENT
(Dkt. Nos. 2, 3, and 10)

June 25, 2015

MASTROIANNI, U.S.D.J.

Magistrate Judge Katherine A. Robertson has recommended the court allow Plaintiff's Motion to Proceed *in forma pauperis* (Dkt. No. 2), but has further recommended the court dismiss the complaint for failure to state a claim, without prejudice to refiling. *See* 19 U.S.C. § 1915(e)(2). Having recommended dismissal, Judge Robertson further recommends the court deny Plaintiff's Motion to Appoint Counsel (Dkt. No. 3). Plaintiff responded by filing an Objection to the Report and Recommendation (Dkt. No. 9), a Motion for Leave to Present Additional Argument and Evidence (Dkt. No. 10) and a Motion for Reconsideration (Dkt. No. 11). In his objection, Plaintiff explains that he has additional documents he will use to prove his claim. Through his Motion for Leave to Present Additional Argument and Evidence, he seeks to put some of these documents before the court. He

provided the same materials to Judge Robertson with his Motion for Reconsideration. Judge Robertson denied that motion noting the absence of any explanation as to why the new evidence was not included in the complaint. Judge Robertson did not offer an opinion as to whether a new complaint, amended to include a more thorough statement of the facts, could be sufficient to state a claim for relief. As Judge Robertson notes, in federal court, the complaint must “set forth sufficient facts in support of any legal claim or coherently describe the alleged unlawful treatment Plaintiff suffered.” (Dkt. No. 12, Electronic Order 4 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).) A dismissal without prejudice allows Plaintiff the opportunity to file with a new complaint that remedies the shortcomings identified by Judge Robertson.

Based upon the thorough analysis presented in the Report and Recommendation, the court, upon de novo review, hereby ADOPTS the Report and Recommendation (Dkt. No. 7). The Motion for Leave to Proceed *in forma pauperis* is ALLOWED, but the complaint is hereby DISMISSED without prejudice and the Motion to Appoint Counsel is hereby DENIED. Consistent with the court’s adoption of Judge Robertson’s Report and Recommendation, the court also DENIES Plaintiff’s Motion for Leave to Present Additional Argument and Evidence.

It is So Ordered.

/s/ Mark G. Mastroianni

MARK G. MASTROIANNI

United States District Judge